

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KIRK D. ROBINSON,

Petitioner,

v.

TAGGART BOYD, Warden of RTC; and
ROB JEFFREYS, Director of Corrections,
Nebraska;

Respondents.

8:22CV412

**MEMORANDUM
AND ORDER**

This matter is before the Court on Petitioner Kirk D. Robinson's Motion for Leave to Appeal in Forma Pauperis ("IFP"). ([Filing No. 70](#).) Petitioner initially filed what has been docketed as a Motion for Certificate of Appealability ([Filing No. 58](#)) in the Eighth Circuit Court of Appeals on November 13, 2023, which the Eighth Circuit construed as a notice of appeal and forwarded to this Court (*see* [Filing No. 58-1](#)). Petitioner also filed a Notice of Appeal ([Filing No. 53](#)) in this Court on November 17, 2023. Petitioner appeals from the Court's Memorandum and Order and Judgment dated November 3, 2023. ([Filing Nos. 48 & 49](#).) Petitioner also requests the appointment of counsel on appeal.¹ ([Filing No. 55](#).)

In his Motion for Leave to Appeal IFP, Petitioner states he is incarcerated and reports no income for the past twelve months. ([Filing No. 70](#).) Petitioner states he has \$51,000.00 in cash or in a checking or savings account, and Petitioner's inmate trust

¹On December 29, 2023, Petitioner also filed a "Motion for Extension of Time for Appointment of Counsel," in which he requested "an extension of the deadline to submit form AO240 [the Motion to Appeal IFP] in regards to the request for court appointed counsel for [Petitioner's] appeal" as a "precaution" in case the Court had not yet received the form. ([Filing No. 71](#).) The Court received Petitioner's form AO240 Motion to Appeal IFP ([Filing No. 70](#)) on December 27, 2023, and, as Petitioner concedes, his Motion for Extension of Time is "moot." ([Filing No. 71](#).)

account information on file with the Court shows a balance of \$53,607.78 as of October 31, 2023. (*See Filing No. 60; Filing No. 61.*) Petitioner describes monthly expenses of \$50.00 for child support payments. Given the extent of Petitioner's available assets, the Court finds that his monthly expenses would not impact his ability to pay the filing fee associated with filing an appeal in the Circuit Court of Appeals. Accordingly, Petitioner's Motion for Leave to Appeal IFP is denied. Petitioner may file a motion to proceed on appeal IFP in the Eighth Circuit Court of Appeals. *See Fed. R. App. P. 24(a)(5).*

As mentioned above, Petitioner also filed what has been docketed as a Motion for Certificate of Appealability (*Filing No. 58*), which the Eighth Circuit Court of Appeals construed as a notice of appeal and forwarded to this Court. Petitioner's motion is addressed to the Eighth Circuit Court of Appeals and clearly seeks a certificate of appealability from the Circuit Court. This Court, therefore, will direct the Clerk of the Court to terminate the motion event and transmit the motion to the Eighth Circuit Court of Appeals along with Petitioner's Notice of Appeal.

Finally, Petitioner asks the Court to appoint him counsel to assist him with the appeal of this matter. (*Filing No. 55.*) “[T]here is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court.” *McCall v. Benson*, 114 F.3d 754, 756 (8th Cir. 1997). *See also* 18 U.S.C. § 3006A(a)(2)(B) (“Whenever . . . the court determines that the interests of justice so require, representation may be provided for any financially eligible person who . . . is seeking relief under section 2241, 2254, or 2255 of title 28.”). The Court has carefully considered the record and finds the appointment of counsel is not warranted. The Court, therefore, will deny Petitioner’s motion for the appointment of counsel, but such denial is without prejudice to Petitioner’s reassertion of his motion before the Eighth Circuit Court of Appeals. Because Petitioner seeks counsel on appeal, he should address his request for counsel to the Eighth Circuit Court of Appeals.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Appeal IFP ([Filing No. 70](#)) is denied.
2. The Clerk of the Court is directed to terminate the motion event for [Filing No. 58](#), Petitioner's Motion for a Certificate of Appealability, and transmit [Filing No. 58](#) to the Eighth Circuit Court of Appeals with Petitioner's Notice of Appeal.
3. Petitioner's motion for appointment of counsel on appeal ([Filing No. 55](#)) is denied without prejudice to reassertion before the Eighth Circuit Court of Appeals.
4. Petitioner's Motion for Extension of Time for Appointment of Counsel ([Filing No. 71](#)) is denied as moot.

Dated this 3rd day of January 2024.

BY THE COURT:



Robert F. Rossiter, Jr.
Chief United States District Judge